

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
WESTCO APPAREL SERVICE,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 85-164

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of a \$6,000 civil penalty for the violation of several state requirements for the handling and storage of hazardous wastes, came on for hearing on March 21, 1986 in Spokane, Washington. Seated for and as the Board were Lawrence Faulk, Wick Dufford, and Gayle Rothrock (presiding). Respondents elected a formal hearing pursuant to RCW 43.21B.230. The proceedings were recorded by Ken Wittstock, court reporter.

Appellant company was represented by its general manager, Dennis Siebenforcher. Respondent public agency was represented by Terese Neu

1 Richmond.

2 Witnesses were sworn and testified. Exhibits were admitted and
3 examined. Argument was heard. From the testimony, evidence, and
4 contentions of the parties the Board makes these .

5 FINDINGS OF FACT

6 I

7 Westco Apparel Service (Westco) is an industrial laundry and dry
8 cleaning establishment which has been providing uniforms to industries
9 in the Spokane area for 15 years. During this time the firm always
10 used tetrachloroethylene (commercially known as Perchloroethylene) in
11 its dry cleaning process.

12 In 1984 approximately 20 drums of this residue, its sludge, was
13 generated and stored outside its building waiting for ultimate
14 disposal.

15 II

16 The Washington State Department of Ecology (WDOE) is a public
17 agency empowered to monitor and enforce the State's hazardous waste
18 management statutes and regulations. It's Eastern Regional Office
19 (ERO) is located in Spokane.

20 III

21 Westco is located directly over the Spokane-Rathdrum Prairie
22 aquifer, a designated sole source aquifer providing the drinking water
23 for the local metropolitan area. The aquifer is located in extremely
24 porous soils (rubble deposited by the Missoula flood) which makes it
25 unusually vulnerable to contamination from surface spills.

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IV

In January of 1984 Westco notified the WDOE it was generating a dangerous waste, tetrachloroethylene sludge, from the bottom of a distillation and recovery system. This sludge waste is commonly called "still bottoms". Westco asked for an identification number, as needed for compliance with the dangerous waste regulations before shipping wastes for disposal.

Additionally Westco asked personnel at the City of Spokane for the names of authorized experienced dangerous waste disposal firms which could take its "still bottoms". Chemical Security Systems, Inc. of Bellevue, Washington was recommended.

V

In the past few years tetrachloroethylene traces have been found in Spokane area wells and is thought to be moving into the aquifer. The source or sources are unknown.

This chemical compound has been analyzed for its characteristics and is known for its toxicity and persistency in the environment, and its carcinogenic properties.

VI

In June 1984 WDOE sent Westco their facility identification number (WAD 010202836). Westco, however, did not contact Chem Security about waste pick up until sometime the following December. In the meantime waste was accumulating in ever larger quantities at the Westco plant.

VII

On February 6, 1985 a WDOE inspector from the Spokane ERO visited

1 the Westco site and noted several 55 gallon drums of dry cleaning
2 waste were stored on the soil along the east side of the main building
3 outside the facility's fence. Alarmed by the unsecured storage mode,
4 the inspector telephoned Westco's general manager and asked him to
5 increase the safety of storage of the drums. He also sent him a copy
6 of the pertinent WAC and a note to contact the inspector if there were
7 any questions.

8 At this juncture no wastes had yet been picked up for proper
9 disposal off-site.

10 VIII

11 A sanitarian, serving as a WDOE inspector, came to Westco on April
12 23, 1985 to conduct a complete facility and grounds inspection to
13 ascertain the company's compliance with the WAC requirements for
14 generators of dangerous waste. During the inspection the sanitarian
15 found Westco to be out of compliance with many items:

- 16 - 51 drums of still bottoms were not properly
17 labeled or dated and had been accumulating for
nearly two years.
- 18 - 17 of the drums were still stored on soil on the
east side of the main building.
- 19 - Darkened dirt, odor, and standing water adjacent
20 to some drums indicated spilled tetrachloroethylene
not cleaned up.
- 21 - The company, Westco, could not state the outside
22 drums were inspected on a regular basis.
- 23 - The WDOE files showed no hazardous waste annual
report ever filed by Westco.
- 24 - There was no emergency communication system
25 readily available in the waste storage area.

1 - Fire control equipment, spill control equipment,
2 or decontamination equipment were not readily
3 available.

4 - No emergency plan or company emergency
5 coordinator had been designated.

6 - No hazardous waste handling training program or
7 trained personnel were in evidence at Westco.

8 IX

9 Westco's general manager made several contacts with Chem Security
10 in late February, March, and April of 1985 attempting to get waste
11 approved for disposal at Arlington, Oregon. On April seventeenth it
12 was apparently approved for disposal at Arlington. On April
13 twenty-third, following the WDOE sanitarian's visit, Westco arranged
14 for a pick-up of its drums. Immediately thereafter Westco was
15 notified Arlington would not accept liquid dangerous wastes after May
16 1, 1985 and Chem Security could not pick it up before then.

17 X

18 WDOE, in late April, had the darkened soil sample from the Westco
19 grounds laboratory tested for purgeable halocarbons. It was taken
20 from the ground by the drums where the sanitarian noted the strong
21 odor on April twenty-third. The sample tested showed the presence
22 tetrachloroethylene in what the inspector considered a high
23 concentration. The sample results were placed together with the
24 several photos taken on site and notes made by the sanitarian. A
25 letter notification of specific non-compliance with WAC 173-303 was
26 then sent to Westco on May 10, 1985, detailing the problems observed
27 in the April WDOE inspection.

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XI

Meanwhile, Westco's general manager responded on several fronts.

In late May he began a process of properly securing his storage drums and in June he began a new method of cleaning and chemicals recovery which has reduced the amount of waste produced at that facility.

He also sought an alternate approved disposal site for the "still bottom" wastes, and eventually, in late summer, obtained approval for disposal at the Kettleman Hills, California facility. Finally in August 1985 he made his first waste shipment.

XII

On June 6, 1985, WDOE issued a Notice of Penalty Incurred (DE 85-431) of \$6,000 for the WAC 173-303 and RCW 70.105 violations documented on April 23, 1985. Separately the WDOE issued a regulatory order (DE 85-430) to correct those deficiencies which caused the violations. Westco asked WDOE for mitigation of the penalty on June 12, 1985. On August 2, 1985 WDOE denied financial relief.

XIII

On August 19, 1985 Westco, feeling aggrieved about the \$6,000 penalty, appealed to the Board for relief since the company felt it had cleaned up the spill and the penalty was sizeable. The matter became our cause number PCHB 85-164. The regulatory order was not appealed.

XIV

As of the date of hearing, WDOE remained unsatisfied that all

1 asserted deficiencies had been corrected. The agency was particularly
2 concerned that a professional analysis of the extent of the spill had
3 never been done and was uncertain that it had been effectively cleaned
4 up.

5 XV

6 The company has ordered new dry cleaning equipment, expected to
7 arrive in the fall of 1986, which should drastically reduce the
8 quantity of "still bottoms" produced.

9 XVI

10 Any Conclusion of Law which is deemed a Finding of Fact is hereby
11 adopted as such.

12 From these Findings of Fact the Board comes to these

13 CONCLUSIONS OF LAW

14 I

15 The Board has jurisdiction over these persons and these matters.
16 Chapters 43.21B and 70.105 RCW.

17 II

18 The Notice of Penalty Incurred and Due enumerates the provisions
19 of Chapter 173-303 WAC and Chapter 70.105 RCW with which Westco failed
20 to comply. The Notice also notes the length of time Westco had after
21 receipt of the facility ID number to develop a program of safe
22 handling of dangerous waste and complying with the code and the
23 statute law. Further the Notice indicates that Westco sits over
24 Spokane's sole source aquifer.

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III

We conclude that specific violations of the WAC's enumerated did occur here and were properly cited:

WAC 173-303-145 sets forth the requirements for any person responsible for a spill or discharge into the environment. Westco failed to do anything immediately following the spill of waste on the east side of the facility, whenever that occurred.

WAC 173-303-200(1) (a) - (e) sets forth the requirements for a generator who accumulates waste. Westco accumulated waste over 90 days in violation of WAC 173-303-200(1) and (1) (a). Westco failed to inspect the areas where containers are stored at least weekly in violation of WAC 173-303-200 (1) (b). Westco failed to date the containers in violation of WAC 173-303-200 (1) (c). Westco failed to label the containers a "dangerous waste" or "hazardous waste," with risks defined, in violation of WAC 173-303-200 (1) (d). Westco failed to file annual reports of dangerous waste activity in violation of WAC 173-303-220.

WAC 173-303-330 requires the generator facility to provide personnel training that teaches personnel to perform their duties in a manner that insures compliance with the dangerous waste regulations. WAC 173-303-330(2) requires that this training as well as other information be documented. Westco failed to detail or document personnel training and therefore violated WAC 173-303-330 and WAC 173-303-200(e).

WAC 173-303-340 requires that Westco be equipped with an internal

1 communications or alarm system capable of providing immediate
2 emergency instruction to the facility; and with portable fire
3 extinguishers, fire control equipment, spill control equipment, and
4 decontamination equipment. WAC 173-303-340 (4) requires that
5 arrangements be made with local authorities to insure that they are
6 familiar with the facility and hazards associated with the waste
7 handled at the facility. Westco failed to comply with these
8 requirements in violation of WAC 173-303-340 and WAC 173-303-200(e).

9 WAC 173-303-350 requires that the generator facility "must have a
10 Contingency Plan at his facility for use in emergencies or sudden or
11 non-sudden releases which threaten the public health and the
12 environment." Westco failed to provide such Contingency Plan in
13 violation of WAC 173-303-350.

14 Finally, WAC 173-303-360 requires that there be at least one
15 employee who can be called on to coordinate all emergency response
16 measures. The role of this emergency coordinator must be spelled out
17 in the Contingency Plan. Westco failed to comply with this regulation
18 as well.

19 Westco, thus failed to comply with numerous provisions of chapter
20 173-303 WAC promulgated under chapter 70.105 RCW. While the rules are
21 complex, the statute adopts a strict liability standard in light of
22 the significant hazards sought to be avoided .

23 IV

24 Each of these violations is a separate and distinct offense and
25 can be subject to penalty. See RCW 70.105.080(1).

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1 Penalty No. DE 85-431 was issued under the provisions of RCW
2 70.105.080(1) which provides:

3 Every person who fails to comply with any provision
4 of this chapter or of the rules adopted thereunder
5 shall be subjected to a penalty in an amount of not
6 more than ten thousand dollars per day for every
7 such violation. Each and every such violation
8 shall be a separate and distinct offense. In case
9 of continuing violation, every day's continuance
shall be a separate and distinct violation. Every
person who, through an act of commission or
omission, procures, aids, or abets in the violation
shall be considered to have violated the provisions
of this section and shall be subject to the penalty
herein provided. (emphasis added)

10 V

11 Three factors are considered in evaluating the reasonableness of
12 any penalty issued under statutory authority which is reviewable by
13 this Board. They are severity of the violation(s); the violator's
14 prior record, and the violator's behavior since the violation
15 occurred. See, e.g. Puget Chemco v. PSAPCA, PCHB No. 84-245 (1985).

16 Severity of violations. Some of the violations in the present
17 case are severe. The Hazardous Waste Regulations (WAC 173-303) have
18 been developed to prevent public health and environmental risks
19 associated with chemical wastes. Such risks may arise due to the
20 toxic, persistent, carcinogenic, ignitable, corrosive or reactive
21 nature of the waste. Tetrachloroethylene is a carcinogenic, persistent
22 and toxic chemical.

23 The regulations are designed to track the chemicals from "the
24 cradle to the grave." It is essential that at all times the contents
25 of the chemicals and their containers be obvious to one who comes in

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1 contact with them or one who must deal with them on an emergency
2 basis. The ramifications of not properly handling the waste is
3 evident in this case where the waste was spilled and allowed to remain
4 in the soil for an unknown period of time. Additionally, here a
5 substantial risk of harm was created by the long-term accumulation of
6 wastes improperly stored. The potential for spilled materials
7 leaching down into the Spokane-Rathdrum Prairie Aquifer, a designated
8 sole source aquifer, makes Westco's practices, and the violations
9 surrounding them, serious.

10 Prior History. The company has no record of prior hazardous waste
11 violations, and it is argued that it should be excused from these
12 first offenses because this is such a complicated and extensive
13 regulatory program. We do not agree.

14 In February, 1985, a WDOE inspector discussed the Hazardous Waste
15 Regulations with Westco's general manager and stated that the drums
16 must all be secured. In addition, a copy of chapter 173-303 WAC, with
17 emphasis on the regulations applicable to Westco, was sent.

18 As a result of this, Westco was aware or should have been aware of
19 general requirements for generators. The company applied for and
20 received a facility ID number and gave notice that it operates a
21 designated dangerous waste. Westco seemingly chose to ignore the
22 state regulations, and the inspector's offer to answer any questions.

23 Behavior since the penalty was issued. This factor is of less
24 weight in a case where WDOE has warned the generator of problems and a
25 penalty is issued following the generator's failure to address those

1 problems. Westco had notice of the regulations and the penalty was
2 issued when Westco failed to come into compliance.

3 Nontheless, Westco has still not satisfactorily addressed all the
4 identified problems. WDOE does not yet know about new company safety
5 practices or emergency equipment. The measures taken by Westco to
6 date to address the spill problem are not adequate. WDOE has not been
7 informed of the real extent of the spill and does not know whether
8 adequate cleanup has been accomplished.

9 Westco did experience difficulty getting an authorized waste
10 transporter and disposal agent to appear with 90 days of readiness for
11 pick up. Other businesses have experienced this difficulty. The
12 accumulations problem could have been solved by timely effort before
13 the April 1985 violations. However, since then disposal has been
14 complicated by the closure of the Arlington, Oregon, disposal site to
15 liquid wastes.

16 VI

17 The penalty assessed under RCW 70.105.080 is not the maximum
18 penalty that could be assessed in this case. With approximately ten
19 individual offenses, Westco could have been assessed \$100,000. In the
20 circumstances of this case, where opportunities to ask questions were
21 not seized upon, excessive accumulations occurred, and a spill
22 actually took place and has still not yet been fully evaluated, the
23 \$6,000 penalty is very reasonable.

24 The Notice of Penalty Incurred should be affirmed.

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VII

Any Finding of Fact which deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law the Board enters this

ORDER


WDOE Notice of Penalty Incurred DE 85-431 is affirmed.

DONE this 23rd day of April, 1986.

POLLUTION CONTROL HEARINGS BOARD


GAYLE ROTHROCK, Vice-Chairman


LAWRENCE J. FAULK, Chairman


WICK DUFFORD, Lawyer Member